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JUDIT TAKACS

How to put equality into practice? Anti-discrimination and equal treatment policymaking and LGBT people

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1. Introduction

My present policy study will start with the summary of the latest Hungarian developments concerning anti-discrimination and equal treatment policymaking affecting LGBT people, followed by an overview of the international policy context, and an outline of recommendations about possibilities to improve the present Hungarian situation.

In Hungary at a theoretical-legal level there has been a gradual development towards acknowledging LGBT rights as basic human rights in the form of elimination of clauses of the Hungarian Penal Code that clearly discriminated against gays and lesbians in 2002, followed by the introduction of the law on equal treatment and promotion of equality of opportunity including sexual orientation and gender identity as protected categories in 2003. However, discriminative aspects affecting LGBT people in a negative way can still be found in the Hungarian legal system as well as in everyday life.

In order to highlight options for practical developments that can also be applied in Hungary I have consulted the international literature and I have interviewed several international experts and stakeholders actively involved in LGBT equal treatment policymaking, whose extensive comments were collected in my policy research paper. This policy study heavily relies on my policy research findings.

2. Hungarian developments in the field of anti-discrimination and equal treatment policymaking concerning LGBT people

2.1. Fighting against legal discrimination

Hungarian legislation concerning same-sex relations was clearly discriminative before 2002 when certain regulations of the Hungarian criminal law functioned as the basis of institutionalised discrimination of homosexuals. Illegitimate relationships between same-sex partners suffered more serious consequences than those of different-sex partners: for example, the age of consent was 18 for same-sex partners whereas it was 14 for different-sex partners.

During the 1990s there was no sexual orientation related anti-discrimination and equal treatment policymaking on the political agenda. However, the practical application of the general anti-discrimination clause of the Constitution in relation to sexual orientation as a basis for discrimination could be observed in the decision making processes of the Hungarian Constitutional Court. In 1995 the Court legalised lesbian and gay partnership by declaring that the previous law limiting partnerships to ‘those formed between adult men and women’ was unconstitutional. The Parliament was ordered to make the changes necessary to recognise same-sex partnerships by 1 March 1996. The partnership law in its present form includes any couple, of whatever sex, that live together permanently in a state of ‘financial and emotional communion’. It is a factual legal relationship, which comes into existence without any official registration; thus it has underlying problems of proof. Law reform is therefore needed to ‘institutionalise’ same-sex relationships and to prevent family and other policy practices discriminating against same-sex couples.

At the beginning of the 21st century Hungary was among the very few European countries – besides, for example, Austria – where the national Penal Code openly discriminated between same-sex and different-sex partners concerning the age of consent in a sexual relationship. In June 2002 the European Parliamentary Committee on foreign affairs issued a recommendation that reiterated its call upon the Hungarian government to eliminate provisions in the penal code which discriminate against homosexual men and lesbian women. Soon after this recommendation, in September 2002 the Hungarian Constitutional Court – perhaps with a view that a country being at that time at the threshold of the European Union membership cannot wait any longer with such decisions – ruled that paragraphs 199 and 200

of the Hungarian Penal Code were unconstitutional and eliminated them.

The rulings of the European Court of Human Rights and even statements by the various committees of the Council of Europe played a crucial part in completing the anti-discrimination penal code reform in Hungary as the Hungarian Constitutional Court, in reaching its 2002 decision, paid special attention to relevant documents of the European institutions devoted to the protection of human rights. The views of these European institutions can be summarised in the following way: Criminal measures against voluntary, consensual homosexual activity constitute interference into the private lives of individuals on the part of the state or, more precisely an infringement of the right to maintain respect for the chosen sexual practice; state interference in the most intimate aspect of private life encroaches on the most personal manifestation of an individual, therefore the state is only entitled to do so on the grounds of extraordinarily serious reasons.

The most important ECHR decisions, potentially influential to national anti-discrimination legislation, were the following:

In the case of **Dudgeon v. UK (Date of judgment: 1981 October 22)**, the European Court of Human Rights for the first time declared that legislation **criminalising consensual sexual acts between adult men** in Northern Ireland was in breach of Convention Article 8 which provides a right to a private life. In the case of **Mouta v. Portugal (Date of judgment: 1999 December 21)**, the Court declared that refusing **child custody** to a gay man simply because of his homosexuality was in breach of Article 8 of the Convention, the right to a private life. It was declared discrimination on the grounds of sexual orientation and violated Article 14 of the Convention which prohibits discrimination. In the case of **Sutherland v. UK (Date of judgment: 2001 March 27 – striking out)** the Court found that the higher **age of consent** for gay men was discriminatory and violated a right to a private life. The **Goodwin v. UK** case (**Date of judgment: 2001 July 11**) was related to the **legal status of transsexuals** in the UK (treatment in relation to employment, social security, and pensions, and inability to marry): the Court found that a test of congruent biological factors could no longer be decisive in denying legal recognition to the change of gender of a post-operative transsexual, and found no justification for barring the transsexual from enjoying the right to marry under any circumstances. The **Karner v. Austria (Date of judgment: 2003 July 24)** was the first ever case relating to the **rights of same-sex partners** that the Court has agreed to consider. It involved a complaint from Siegmund Karner, an Austrian gay man who has lived in his male partner's flat since 1989 and shared the expenses of the flat. Mr Karner's partner died in 1994

and designated Mr Karner as his heir. However, the landlord of the property started the process of terminating the tenancy with Mr Karner. District and Vienna Regional Courts interpreted the term ‘life companion’ of the Rent Act as including same-sex partners who lived together for a long time. However, the Supreme Court disagreed with this interpretation. For the first time in its history, the European Court of Human Rights ruled that this was discrimination based on sexual orientation and that the European Convention on Human Rights had been breached.

Decisions of national legislative bodies can also influence the judgments of the European Court of Human Rights. For example, in 2003, in the Karner versus Austria case Robert Wintemute, Professor of Human Rights Law at King’s College, London prepared a third party intervention on behalf of ILGA Europe and two other British NGOs. In this intervention the Hungarian Constitutional Court’s decision of 1995, legalising lesbian and gay partnership by declaring that the previous law limiting partnerships to ‘those formed between adult men and women’ was unconstitutional, was cited – together with various court rulings from other countries – in pleading for a positive judgement of the ECHR. This example indicates the importance of appropriate national and European level legislation as well as the coordinated work of national and European level NGOs in advancing LGBT rights.

2.2. Equal treatment legislation

Before the introduction of the law on equal treatment and the promotion of equal opportunities in 2003, Hungary already had national laws prohibiting discrimination, such as the Constitution, the Labour Code, the Act on Public Education and the Act on Public Health, but only the latter explicitly prohibited sexual orientation-based discrimination. In all other cases, the question whether sexual orientation is included under the heading “other situations”, usually ending the list of discriminatory forms based on “race, colour, sex, language, religion, political or other opinion, national or social origin, circumstances of wealth and birth” – given by the Constitution – was a matter for interpretation.

The first general anti-discrimination draft bill, submitted to the Hungarian Parliament in April 2001, included the prohibition of discrimination based on sexual orientation, and clear references to the 2000/43 Racial Equality Directive as well as the 2000/78 Employment Equality Council Directive. By the time the draft bill on “equal treatment and the promotion

of equal opportunities” reached the stage of parliamentary discussion at the end of 2003, besides the protected categories listed in the Employment directive – including race, skin colour, ethnicity, language, disability, state of health, religion, political or other views, sex, sexual orientation, age, social origin, circumstances of wealth and birth, and other situations – additional categories such as family status, motherhood (pregnancy) or fatherhood, gender identity, part-time or limited period employment status, membership of interest representing bodies, were inserted into the list of protected categories. The bill passed in December 2003 and came into force on January 27th 2004.

The introduction of a general equal treatment act was not received with uniform enthusiasm in the Hungarian political arena, nor in civil society. Counter arguments were cited by politicians as well as NGOs stating that from the perspective of providing really effective, “tailor-made” social protection for certain social groups – especially for women and Roma people – it would be more suitable to introduce separate acts dealing with their special problems. During the parliamentary debate of the draft bill there was also a certain level of rejection expressed and a lack of comprehension voiced against the inclusion of sexual orientation and gender identity into the protected categories. These counter arguments reflected a certain hierarchical preference concerning the different grounds for equal treatment policymaking where providing ethnic groups and women with special protection claims a higher priority than the “special privileges” demanded by surprise categories like sexual orientation and gender identity.

The main scope of the Hungarian Equal Treatment Act is rights protection: this is the “hard core” to which the “softer” field of promoting equal opportunities was added as a kind of direction indicator. Hungarian law makers seemed to be aware of how difficult – if at all possible – it is to regulate social problems associated with the promotion of equal opportunities by legal means, and they chose to concentrate on more tangible assets. The intention of the Hungarian government officials preparing the new law was to focus on practical legal problems from a specific rights protection perspective, and to protect the rights of precisely those categories of people who appeared to have the highest vulnerability to discrimination gauged on previous court cases. In this context the role of NGOs was to provide practical knowledge accumulated – in this case mainly – from legal practice gained from court jurisdiction, while the government policymakers’ role, especially through the work of ministerial as well as external experts, was to elaborate a theoretical framework that can be effectively applied to practical cases.

The inclusion of the “real surprise” category of gender identity can also be explained as a logical extension of applying a rights protection approach. Even though there has not been too much experience accumulated in this field in Hungary as yet, gender identity is a possible ground for discrimination that could have been – and was – taken into consideration. As opposed to the inclusion of sexual orientation – that seemed to be in perfect harmony with EU trends reflected by the 2000/78 Employment Equality Council Directive –, the appearance of gender identity among the protected categories of the Hungarian Equal Treatment Act cannot be explained by EU trends or expectations. This was achieved mainly because of the effective interest representation strategies applied by Hungarian NGOs, namely the *Háttér Support Society for LGBT People* together with the *Hungarian Helsinki Committee* in the course of public consultations, initiated by the Ministry of Justice that provided real opportunities for the interested actors of Hungarian civil society to voice their views. Therefore it can be said that the power of determination – on the part of the two above mentioned NGOs as well as that of government officials involved in preparing the act in compliance with rights protection principles – provided us with a new law including progressive elements, even when judged in a modern European context.

2.3. Practical application of equal treatment claims

By examining practical applications of equal treatment claims for LGBT people in Hungary, the legal possibility provided by the Equal Treatment Act for initiating *actio popularis* – that enables societal bodies and special interest groups to start legal action without the personal involvement of the individual victim if the mistreatment is based on a category which is an essential feature of the individual’s personality – seemed to be a useful and practical means to fight against discriminatory practices.

The practical realisation of equal treatment claims for LGBT people in the field of family and partnership rights is still quite limited in Hungary. Since same-sex marriage is not possible in Hungary, same-sex partners can emulate some of the conditions of married life only with the help of private legal contracts. The “Let’s start a family!” programme of the Legal Aid Office of Háttér Support Society for LGBT People offers different means for arranging a legal framework to start same-sex family life. These means include a civil union contract for arranging property, financial and personal relationships: encompassing important issues such as providing rights to obtain medical information about the partner’s state of health, and

rights of disposal over the partner's assets when that partner is in a helpless state; preparation of a will; appointment of guardians (if there are children). The existence of this program shows that same-sex couples need to make extra efforts if they want to establish a level of family security similar to that inherently enjoyed by married couples.

The difficulties caused by the lack of institutionalisation of registered partnership (available also for same-sex couples) were highlighted in a case in 2003: the pension application of a surviving partner (of a same-sex couple) was initially rejected by the Hungarian National Pensions Authority on the ground that the social security law in the case of the death of one partner in a cohabiting partnership not having children, the surviving partner is eligible for a widow's or widower's pension only if ten years of uninterrupted cohabitation can be proved. However, the authority argued, as the modification of the Hungarian Civil Code legalising same-sex partnerships (following the decision of the Hungarian Constitutional Court in 1995) became operational only in 1996, the ten years cohabitation period could only be completed in 2006. In the court cases, following the rejection of the widower's pension application, however it was successfully argued that the law maker's intention in 1996 was to end discrimination in 1996, not in 2006, and therefore any period of cohabitation preceding the legislation should be taken into account.

From the point of view of developing anti-discrimination and equal treatment legislation and policymaking the analysis of this case raised two important points. In the first place a precedent was created with potentially far reaching consequences in other fields of law (especially in disputes involving probate law between relatives and surviving partners of the deceased). In the second place this judgement could be interpreted as a symbolic compensation for same-sex partners as it created a retrospectively valid legal framework covering a period when suitable legislation for same-sex partnership was nonexistent.

3. International policy context

The international policy context of LGBT equal treatment issues can be described by a three level model, in which anti-discrimination policymaking is the first level, promoting equality of opportunity the second, and promoting diversity is the third level.

Anti-discrimination policymaking usually starts after penal codes have been reformed by eliminating the main forms of direct legal discrimination targeting LGBT people. The main goal of the anti-discrimination policymaking process is defining certain segments of the population as being in a disadvantageous situation to be protected, and introducing the idea that discriminating them is wrong, and furthermore punishable by law. In theory the anti-discrimination principle is a symmetrical one applying to members of both social minority and majority groups but in practice it is applied most of the time to people characterised by socially disadvantaged minority positions. As anti-discrimination policymaking has a less direct focus on social disadvantage, than positive – or affirmative – action at the level of promoting equality of opportunity, it has the potential to address the main issue of social inclusion in a broader sense in society at large, by presenting anti-discrimination principle as a general human rights issue that applies to everyone.

The second level is promoting equality of opportunity, often manifested in the form of taking positive action measures directly in favour of the disadvantaged groups. At this level the main focus is on systemic discrimination embedded in the system. For example, only after identifying and uncovering indirect forms of discrimination can one start introducing positive action measures in an effective way. Mainstreaming – the systematic consideration of the particular effects of all policies, at the point of planning, implementation and evaluation, on disadvantaged groups – is a method that can be effectively applied at this stage. We can distinguish micro level mainstreaming concentrating on particular policies and macro level mainstreaming that focuses on the overall position of certain disadvantaged groups – such as women, ethnic minorities, disabled people, or LGBT people – in society. In some cases the mainstreaming analyses can result in the recognition of the necessity to introduce positive action measures. Mainstreaming and the rights based approach characterising the anti-discrimination policymaking stage can also overlap in those instances when the existence of anti-discrimination legislation leads social actors to pursue a mainstreaming-like self-analysis in order to avoid litigation against them.

The mainstreaming method can also be applied at the third stage which is often referred to as promotion of diversity characterised by the aim to find an optimal balance between respecting – as well as celebrating – diversity while seeing it as an integrated part of social reality. At this stage the main emphasis is not only on the right to be different, but also on viable options in practice that do not threaten one with being socially excluded.

By examining the interwoven issues of LGBT legal emancipation, political emancipation and citizenship, social emancipation and cooperation, awareness raising, and policy implementation on different levels, several good practices and problematic areas can be highlighted.

3.1. In the context of LGBT **legal emancipation** the starting point was that the fight against sexual orientation and gender expression based discrimination has been articulated as a human rights issue. The two main arguments most commonly used in challenges to sexual orientation based discrimination brought under the European Convention on Human Rights and the United States Constitution are the “*immutable status argument*”, presenting sexual orientation as a fixed condition like one’s race or sex, and the “*fundamental choice argument*” presenting sexual orientation as chosen like one’s religious belief or political opinion. While in the United States the perception of sexual orientation as an immutable status became popular from the 1960s, in Europe the fundamental choice argument seems to be the most favoured one, as it is also indicated by the decisions of the European Court of Human Rights concerning the right to respect for private life.

Including the explicit prohibition of sexual orientation based discrimination into a national, federal or state constitution is a very good practice. However, there is a chance to put sexual orientation into the constitution if it is being revised or a totally new one is being adopted, therefore in most of the countries it is not a very promising expectation to find the prohibition of sexual orientation based discrimination in the constitution. At present there are altogether four countries having national constitutions specifically prohibiting sexual orientation based discrimination including South Africa (1993), Ecuador (1997), Fiji (1998) and Portugal (2004).

Nevertheless, it can still remain problematic to decide what sexual orientation based discrimination covers exactly: whether it refers to discrimination against same-sex sexual activity, or whether it also covers discrimination against same-sex couples. While in Europe

the de-criminalisation of same-sex sexual activity of consenting adults has become a legal norm cultivated by the European Union as well as the Council of Europe, there are still some more or less interwoven problem areas in the field of legal emancipation of LGBT people including the legal treatment of LGBT couples and parenting rights. Same-sex marriage, marriage of transsexual people, individual adoption by openly gay men or lesbian women, or joint adoption by same-sex couples are still controversial legal issues that are addressed only in a few countries in Europe and worldwide.

Parenting is an especially heated issue because of the widespread assumption that children of a non-heterosexual or transsexual parent or same-sex parents can become especially vulnerable to social prejudice directed primarily at the parent(s). However, in the political distribution of family rights and responsibilities social prejudice cannot be taken into consideration in order to restrict parenting rights.

In comparison to child custody and individual adoption cases, adoption by same-sex couples can be even more complicated. We can distinguish between joint adoption of an unrelated child by a same-sex couple and joint adoption of the biological child of one of the same-sex partners, where the latter option seems to be achieved more easily. In most places where joint adoption by same-sex couples is a legal option, it is interpreted within a general discursive framework pointing to the necessity to extend the pool of potential adoptive parents. Therefore it is usually presented in the political agenda as a children rights issue having the “side effect” of advancing same-sex couples’ rights.

In general legal emancipation of LGBT people can be defined as a process characterised by criminal law reform – i.e. elimination of discriminative aspects of penal codes – as a starting point, leading to anti-discrimination protection and promotion of equality. Anti-discrimination protection can be analysed on an individual level, when the focus is on the protection of individuals, and on a relational level, when the focus of protection is the individuals’ relationships with other partners such as partners or children. Anti-discrimination protection is a very important phase of legal emancipation but its essential element is prohibition of already existing and often widespread social practices pushing LGBT people into disadvantageous situations. Therefore it can be seen as a correcting device of older norms and practices. Contrary to criminal law reform and anti-discrimination protection, promotion of equality with its pronounced orientation on the future, represents not only a different phase of the legal emancipation process but also a different paradigm: it is not just

against maintaining social inequalities developed in the past and suffered from in the present, but very much for setting new norms of social coexistence. However, applying the promotion of the equality principle goes beyond rights protection: it is rather a political than a legal issue. It is hard to incorporate positive state action into law because it involves political decisions about the distribution of state or government resources that always tend to be limited.

3.2. Political emancipation of LGBT people can be analysed by applying the concepts of intimate citizenship and sexual citizenship emphasising the necessity to broaden the scope of modern citizenship to consider full participation opportunities of social groups, including LGBT people, being formerly deprived of full community membership. Intimate citizenship focuses on rights and obligations connected to the most intimate spheres of life: with whom and how to live one's personal life, how to raise children, how to handle one's body or one's self-perception as a gendered being and so on. Sexual citizenship is concerned with bodily autonomy, institutional inclusion, rights of free expression, and spatial themes, and draws attention to the various types of social exclusion that can limit citizens' political, social, cultural, and economic participation because of their genders, sexualities and bodies.

In the context of sexual citizenship the great dilemma of political emancipation is whether to claim equal rights for LGBT people on the basis of a normalising politics presenting them as normal, good citizens who deserve respect and integration because of their conformity to dominant social norms, since this approach would still imply a political logic of minority rights grounded in heterosexual dominance. It is ambiguous to interpret the extension of certain rights associated with citizenship to embrace lesbians and gay men as a success, if equality and normality is still defined in heteronormative terms. In order to gain full citizenship rights for LGBT people the political agenda should be broadened at least in three dimensions: in gaining respect and representation in national institutions including the government, the workplaces, schools, families, welfare and health care institutions; in having social dialogues encouraged by institutions, and in the manner of equal partnership where concerns of all parties can be voiced and heard; and by revisiting the norm of the "good citizen".

Sexual citizenship can be a useful reference point in the political struggle to gain "full community membership" for LGBT people, if carefully applied. However, one of the main questions here is whether equality is interpreted in a static social context or moral universe

where the only active agents of change are social minority groups who should actively assimilate into the norms handed down to them by the majority, or whether equality is interpreted in more flexible terms as a joint achievement resulting from mutual efforts of various social segments and coalitions, oriented towards gaining ‘different but equal’ rights and opportunities.

Sexual citizenship is increasingly being grounded in a ‘politics of affinity’ operating with politicized flexible ‘affinities’ and coalitions, rather than with fixed, monolithic identities. However, this new politics of affinity is meaningful only as being part of a coalition-based model that allows for the effective political cooperation of heterogeneous LGBT crowds. Applying a coalition based strategy can also be useful in activating transgender citizenship. A wide variety of people transgressing the traditional gender binaries can identify themselves as a transgender person; therefore it would be hard to use the transgender category – being perhaps even more fictitious than homosexuality – in the course of a unifying sexual identity based politics. However, we can witness the effective functioning of ‘transgender rights coalitions’ in gaining gradually ‘fuller’ community membership for some transgender people in some cases.

Political emancipation is inseparable from social emancipation of LGBT people. Social emancipation is an umbrella term embracing the whole spectrum of life from legal frameworks and political participation opportunities to cultural representations.

3.3. Social emancipation of LGBT people is often interpreted as a kind of consecutive phase of legal emancipation. In this context anti-discrimination legislation is seen as a foundation stone in a process of constructing social equality. Legal discrimination is a much more tangible asset than social discrimination, as it is easier to identify and thus fight against legal grievances than against “amorphous bad feelings” lurking in society. Law can – and should – reflect and promote social change, but it is far from being the only or the main force of change. Law can be effective if people are able to accept or even internalise the normative expectations it represents.

Legal and social emancipation can also be interpreted as interwoven issues or different aspects of the same process. If legal emancipation can be measured by the changes in the codified norm system of society, social emancipation is closely connected to the development of civil society, and the ability of social groups to represent their interests. In this context

cooperation skills and opportunities – for example, cooperation of LGBT people to form organisations; cooperation between different, national and international, NGOs to form broader coalitions; cooperation between the state and NGOs – can become very important. In a certain level of socio-cultural development LGBT social emancipation is inseparable from public manifestation of distinct identities and lifestyles, and thus from the effective functioning of identity politics. Identity politics is a system-specific concept: it can hardly be interpreted in anti-democratic political systems characterised by the extensive erosion of private identities, and the rigid – often forced – separation of public and private identities. The “natural” context of identity politics is civil society, the field of social self-organisation, being the framework as well as the guarantee of modern identity formations.

Effective functioning of LGBT civil organisations can be enhanced by forming broader coalitions. National LGBT organisations often seek international support from international LGBT associations – such as ILGA – or national organisations of other countries. On the national level these broader coalitions may include other actors of civil society representing the interests of other minority groups, religious organisations, human rights organisations – LGBT people as well as “their heterosexual friends”. LGBT NGOs can also cooperate effectively with quasi autonomous governmental organisations (quango’s), such as equality bodies, especially if there is opportunity for regular consultation between them.

Achieving a certain level of social visibility for social groups suffering from social disadvantages seems to be a precondition for claiming rights. However, visibility can make individuals vulnerable and therefore not everyone can “afford” to come out. On the other hand, a relatively high level of social visibility does not necessarily correlate with positive developments in legal emancipation. It is very hard – if not impossible – to articulate the interests or defend the rights of socially invisible actors. Discrimination against LGBT people can remain hidden in a lot of instances. This can be explained in part with the preference of victims to avoid publicity at the individual level: in this context fear of humiliation is an important factor. The hidden nature of discrimination against LGBT people can also be explained in part with the lack of appropriate responsiveness and incentives on the institutional level. Existing but ineffectively functioning – i.e. socially invisible for those who would have need of these – institutions can contribute to the fact that certain forms of discrimination remain hidden. Lack of incentives to turn to a specialised official body responsible for equal treatment issues can also decrease the determination of people to complain about discrimination. In certain countries – including Hungary and Romania – the

victims of discrimination cannot be compensated financially from any fines to be paid to the equal treatment authority by the perpetrator of the discrimination. Victims have to start a court case to seek personal compensation, a procedure – often costly in time and money – that complicates the victims' life and is therefore rare.

Hidden discrimination can result from subtle prejudice as well as from the lack of considering the possible negative consequences of certain policies for different social groups. The latter type is referred to as indirect discrimination which is hard to avoid once the policy is in operation but can be prevented with careful examination during the policymaking process

3.4. The level of social emancipation of LGBT people is closely connected to the development of anti-discrimination legislation and policymaking as well as to the practical application of preventive measures to avoid the occurrence of discrimination. One of the main tools of preventing discrimination is **awareness-raising**. The main forms of awareness-raising include information exchange and communication, education and training, as well as providing people with a personal experience, and participation and involvement opportunities. Information exchange and communication can be realised in several contexts: within formal institutional procedures, for example, in the course of litigation or policymaking; in the – mainstream as well as “own” – media; in publications – such as reports, information booklets, fact sheets, brochures, scientific publications; in meetings – such as workshops, exhibitions, conferences; and in events like festivals and demonstrations.

Awareness-raising in the form of education and training can be realised through developing specific educational programmes (lectures, courses etc.) and educational materials (text books, chapters in school books, training manuals etc.) – within the schooling system by targeting students as well as teachers, and outside the schooling system by targeting the general public or its certain segments –, and also through conducting social scientific research and disseminating research findings. Participation and involvement opportunities include, for example, consultations on official reports, documents and decisions – provided that there is intention to involve people in these activities on the “official side”.

It is hard to give an exact definition of awareness-raising but it certainly implies an element of discontent regarding a problematic situation as well as reference to the need of change and mobilisation. In the practical sense awareness-raising can be seen as part of a political agenda setting where the problems of a smaller social group have to be transformed into socio-

political issues of greater general significance by a two-phase process of meaning definition and message transmission. A crucial element of awareness-raising is therefore the meaning management of the original issue: it has to be presented with a socially digestible flavour that is still acceptable by the issue-initiators who feel the most urgent need for social change in the given field.

As far as problem recognition is concerned, initially people should be made sensitive towards LGBT discrimination: they must be able to identify it in order to prevent it, and/or they must be able to recognise it in order to do something against it. The law can be helpful in this respect: the fact that anti-discrimination legislation exists can have awareness-raising effects in itself, as it conveys the message that according to the state, discrimination is a wrong social practice with punishable consequences. In the European context the learning process of making people realise that discrimination is wrong first started with targeting racial discrimination, and continued with gender discrimination. In this sense LGBT people can follow a beaten track.

Discussing anti-discrimination legislation can become a lecture topic or it can even be integrated into the school curriculum. However, the existence of anti-discrimination legislation in itself does not mean too much, if people do not know about the law – because it is not publicised or applied very often –, or if they do not make practical use of it because of fear and/or the silent acceptance of a “second class citizen status”.

Raising awareness about LGBT issues can also be presented as part of a broader educational program with the focus on accepting and appreciating diversity in several aspects of life. This education is more likely to be successful if started quite early in life and being integrated into the socialisation process during one’s formative years.

An effective means of awareness-raising would be to provide civil servants and other state officials with training and guidelines on how to deal with LGBT issues. However, in most cases the problem is not only about the lack of publicity of existing human rights protections from the government’s side, but also about the lack of accurate information on discrimination provided for the government. In countries where there is a single equality body that can also deal with LGBT issues or where one of the specialised equality bodies focuses exclusively on LGBT issues, the functioning of these institutions can contribute to a great extent to awareness-raising as well as implementation of equal treatment principles.

Human rights protecting NGOs, including LGBT associations, can play a significant role in awareness-raising, too. They can help victims of discrimination by providing them with information and legal assistance – and often with emotional support to persevere. In a number of countries there is also a legal possibility for initiating *actio popularis* that enables societal bodies and special interest groups to start legal action without the personal involvement of the individual victim if the mistreatment is based on a category which is an essential feature of the individual's personality. Successful anti-discrimination court cases can provide media visibility that can encourage other victims of discrimination to step forward on the one hand, and discourage those who would be inclined to discriminate on the other.

Besides media visibility, another important factor of increasing public knowledge and understanding concerning LGBT issues is gaining 'political visibility'. At present sexual political themes do not seem to enjoy great popularity – if they are present at all – in the political arena. Governments and political parties do not have well-considered sexual political programmes and they do not tend to think of people as *sexual citizens*.

A basic ingredient of awareness-raising is the accumulation of information and knowledge about LGBT issues in form of reports describing problematic situations, and research studies attempting to analyse the causes and consequences of certain social problems. Reports can play a very important role in problem recognition and context identification by drawing attention to facts proving that certain problems exist. Reports – providing a map of problems – and systematically collected information contribute to effective policymaking and policy-monitoring. Even the fact that someone – let it be an NGO, an equality body, an academic, or an influential politician – is interested in collecting certain type of information can have awareness-raising effects.

Knowledge accumulation can also be achieved in a more analytically focussed way: in the form of social scientific research studies. In the context of making and evaluating different policy measures qualitative data collection and analyses are especially important elements of the diagnostic process that can inform decision makers not just on the existence of the problem but also on its content as well as the indications of its possible solutions.

Awareness-raising is a complex process providing several opportunities to increase public knowledge and understanding concerning LGBT issues. Even though raising awareness refers

to mobilisation more on the cognitive – or emotional – than on the practical level, by increasing people’s ability to implement change it can contribute to practical changes, too.

3.5. Implementation often refers to implementing legal changes in order to advance social emancipation of LGBT people. One of the most important preconditions of effective implementation is the existence of a well-functioning institutional framework including human rights commissions, specialised equal treatment bodies, and expertise centres. There are two main forms of equality bodies: a country either has a general body responsible for all sorts of equal treatment issues – such as the Equal Treatment Commission in the Netherlands, the Equality Commission for Northern Ireland, the National Council for Combating Discrimination in Romania, the Equal Treatment Authority in Hungary –, or it has several specialized institutions, each dedicated to different scopes. Sweden is the only country in the world that – besides other specialised ombudsman offices such as the disability ombudsman, the ombudsman for equal opportunities between women and men, or the ombudsman against ethnic discrimination – has “HOMO”, the Office of the Ombudsman against Discrimination on the Grounds of Sexual Discrimination.

In certain fields a public body responsible for anti-discrimination issues, endowed with official competence and authority backed up by the state, can be more effective – or it can be effective in different fields – in fighting against discrimination than an NGO having limited access to information and resources. For example, a specialised public agency can play an active role in preventing discrimination by pre-monitoring public policies in their planning stage and drawing attention to their possible negative consequences for LGBT people.

In some cases NGOs can actively contribute to the establishment of equality bodies, by using their lobbying efforts and offering their practical expertise accumulated in the course of their interest representing activities. This can indicate that having a public anti-discrimination agency is also perceived as important and useful by civil society actors.

In most countries where there is anti-discrimination legislation in operation one general equal treatment institution was set up embracing various equal treatment issues based on several grounds such as ethnicity, gender, age, disability, sexual orientation etc. In some places – like in Northern Ireland – a single equality body is formed by uniting previously independent specialised anti-discrimination agencies and by integrating the “other article thirteen grounds” into the scope of the already existing institutional framework.

The main advantage of having a general public agency seems to be that it tends to have more competence and resources than a specialised body focusing on only one field, and it can also be better equipped to deal with multiple discrimination cases, when persons are being discriminated on more than one ground at the same time. However, within a general equality body there is a higher risk of the emergence of a certain hierarchy of rights, where certain forms of discrimination tend to attract more attention than others. On the other hand, the main advantage of having several specialised equality agencies each focusing on only one special field is the potential to accumulate greater expertise on one given field. It seems that an optimal solution would be to combine the functioning of a single equality body with specialised expertise centres.

At present the Netherlands can be characterised by the most developed system concerning the implementation and monitoring of LGBT equal treatment issues. The Commissie Gelijke Behandeling (CGB; Equal Treatment Commission) was established in 1994 with the primary goal to promote and monitor compliance with the existing equal treatment laws. There are additional advantages of having such a commission including the possibility to avoid potentially costly, time consuming and humiliating court cases as well as the concentration of practical knowledge on various types of discrimination which can be also used by researchers and policy makers. A specialised expertise centre on gay and lesbian policy issues started to operate in 2002 in the Netherlands, offering a steady source of expertise for policy makers especially at the level of local politics.

Equality bodies and expertise centres can provide major means of implementing equal treatment for LGBT people in everyday life, especially in a social environment where there is still limited awareness concerning these issues among civil servants, state officials, politicians and members of the general public.

Additionally there are several fields where implementing LGBT equal treatment practices is perceived to be especially problematic, including workplaces, religious settings, and social contexts relevant to young people and old people respectively. According to the results of European EQUAL projects, heteronormative expectations prevail in most workplaces: everyone is automatically considered to be heterosexual. Non-heterosexuals have to make extra efforts to be accepted by their colleagues when trying to enlighten them by contrasting the content of widespread stereotypes with real life. For LGBT employees the first important

step in the workplace is the decision to come out as a non-heterosexual person. Awareness-raising programmes can help to motivate people to see diversity, including sexual and gender diversity, as an enriching feature that can make the workplace a better place to be. However, awareness-raising at the workplace can work more effectively if it is backed up by sufficient and effective equal treatment legislation, and if for example, trade unions are also committed to the implementation of equal treatment practices. Creating a more tolerant, friendlier work environment for LGBT people can positively affect the productivity level of work: if LGBT people are free to be themselves, they can focus more on their work, and less of their energy will be wasted on trying to conceal the non-heteronormative aspects of their lives. In awareness-raising trainings addressing workplaces, arguments about the potential increase of productivity resulting from a more LGBT friendly workplace climate can sometimes work even better than appeals to human rights.

In the context of implementing equal practices for LGBT people there is still a lot of work to be done concerning the problems of young LGBT people. Young non-heterosexuals seem to be especially vulnerable to discriminatory practices in the school system which can be manifested in the behaviour of their teachers and peers, or it can also be embedded in the school curricula. NGOs can offer assistance for young LGBT people by providing them with an accepting family-like environment where they can feel at home. In this context *the community* can serve as the *family of choice* for young LGBT people. LGBT civil society can provide young LGBT people – and LGBT people in general – whose cultural, religious or ethnic background is not tolerant towards their sexual orientation or gender identity, with a shelter where they can try to be themselves. In this context “coming in” – coming into the community – becomes an important concept.

In comparison to young LGBT people there is even less attention paid to the special needs of old ones. In the aging societies of the developed world in a certain stage of their life LGBT people are likely to find themselves in old people’s homes where they can start all over again their “liberalisation” or coming out process. Implementing equal treatment practices for old LGBT people is therefore an issue that can be expected to attract increasing social attention in the future. In addition, LGBT people who have to spend some time in hospitals or other institutions of the health care and the social care system can also have similar experiences, though – if it is only a temporary stay – perhaps to a lesser extent.

Harmonising religious beliefs with one’s non-heterosexual sexual orientation is often

regarded as an issue not to be included in the scope of equal treatment practices. However, as certain discriminatory practices seem to be closely related to religious beliefs, it can be important to refer to the findings of *The Social Dialogue on Homosexuality, Religion, Lifestyle, and Ethics* project initiated by the Dutch COC together with religious organisations. According to their findings in the present European context it can be increasingly problematic to define the LGBT movement as being an exclusively “white and secular” movement. The modern Western concept of homosexuality is not necessarily understood in the same way by people coming from other cultural backgrounds, therefore instead of ethnocentric assumptions a more culturally relativistic approach had to be applied in order to highlight the potentially very different contents of the ‘homosexuality’ concept. Awareness of these interpretational differences can help to start an effective interaction between LGBT NGOs and religious organisations. Leading a dialogue seems to be one of the most important means of effective interaction at this level.

4. Recommendations for improving Hungarian anti-discrimination and equal treatment policies concerning LGBT people

1. Law reform is needed to institutionalise same-sex relationships in the form of registered partnership or same-sex marriage and to prevent family and other policy practices discriminating against same-sex couples.

Legislative development introducing registered partnership can be beneficial to everyone. The present factual legal relationship of cohabiting partners could be transformed into a more institutionalised form of relationship by the act of official registration. This way it would become unnecessary to make specific arrangements concerning property, financial and personal relationships: encompassing important issues such as providing rights to obtain medical information about the partner's state of health, and rights of disposal over the partner's assets when that partner is in a helpless state; preparation of a will; appointment of guardians (if there are children) etc. It is not a specific LGBT issue, and there are international examples that can be followed (like the institution of PACS in France).

Legislative changes to introduce same-sex marriage would mean “opening up” marriage for non-heterosexual people and provide them with the same rights, obligations that married people have at present. Opening up heterosexual marriage would also lead to constructing a legal framework for adoption of children by same-sex partners.

2. Law reform is needed to provide a legal framework for adoption of children by same-sex partners in the form of joint adoption of the biological child of one of the same-sex partners, and joint adoption of an unrelated child by a same-sex couple.

Legislative changes allowing adoption of children by same-sex partners can be presented in Hungary mainly as a children right issue – similarly to what happened in the United Kingdom where joint adoption by same-sex couples was interpreted within a general discursive framework pointing to the necessity to extend the pool of potential adoptive parents, having the “side effect” of advancing same-sex couples' rights, too. Here one of the main points is that in the political distribution of family rights and responsibilities social prejudice cannot be taken into consideration in order to restrict parenting rights. It is also important to emphasise that children living in different family arrangements must not be discriminated on grounds of a state supported normative hierarchy of less or more desirable family arrangements, as

children usually have little control over these developments; they just suffer the disadvantageous consequences.

3. At the level of implementing legal changes concerning LGBT people appropriate conditions for effective functioning have to be provided for the Hungarian Equal Treatment Authority.

In order to prevent the development of a hierarchical scale of different grounds of discrimination where LGBT issues might not receive sufficient attention, a capable body or person with commensurate expertise on LGBT issues must be given responsibility for that area of the functioning of the Hungarian Equal Treatment Authority. Furthermore, no one person or committee can be expected to know all there is to know about current LGBT issues at the local, national and international levels, therefore there is a great need to establish expertise centres in this field.

4. Awareness-raising programmes are needed in order to prevent discrimination against LGBT people.

Information exchange and communication can be realised in several contexts: within formal institutional procedures, for example, in the course of litigation or policymaking; in the – mainstream as well as “own” – media; in publications – such as reports, information booklets, fact sheets, brochures, scientific publications; in meetings – such as workshops, exhibitions, conferences; and in events like festivals and demonstrations.

Awareness-raising in the form of education and training can be realised through developing specific educational programmes (lectures, courses etc.) and educational materials (text books, chapters in school books, training manuals etc.) – within the schooling system by targeting students as well as teachers, and outside the schooling system by targeting the general public or its certain segments –, and also through conducting social scientific research and disseminating research findings. Participation and involvement opportunities include, for example, consultations on official reports, documents and decisions – provided that there is intention to involve people in these activities on the “official side”.

Therefore raising awareness of LGBT issues should be a standard part of school curricula, the training arrangements and guidelines for civil servants and other state officials. Similarly

special programmes targeting the workplaces are needed to tackle the heteronormative climate. Good and effective publicity discussing anti-discrimination and equal treatment legislation and policies, as well as producing professional reports and study findings about LGBT issues are essential to achieve practical progress realising the theoretical possibilities of the existing framework.

5. LGBT people should be empowered to occupy social space to represent their interests and serve their needs.

In Hungary a number of NGOs has been at the forefront of the struggle for social acceptance of LGBT people. Besides promoting the manifestations of various viable LGBT lifestyles, they have provided much needed public services including personal and telephone counselling services, legal aid, AIDS and STD prevention programmes, and awareness-raising material for schools. Effectively functioning LGBT organisations can provide young LGBT people with a *family of choice* that they can come into before coming out in society at large. Senior LGBT people also have a great need for this kind of support when they find that the struggle for their social emancipation will start all over again in old age if they come to depend on the heteronormative health and social care systems.

As NGOs in this way act like a proxy of the state in the sense that they provide public services which should by rights be provided by the state, adequate funding through the public purse is in order.

6. LGBT people should be provided with full community membership.

Political emancipation of LGBT people should be advanced by highlighting the various types of social exclusion limiting citizens' political, social, cultural and economic participation because of their genders, sexualities and bodies. LGBT people should be provided with full community membership by gaining respect and representation in national institutions including the government, the workplaces, schools, families, welfare and health care institutions; by having social dialogues in the manner of equal partnership, encouraged by state institutions; and by revisiting the norm of the "good citizen" who tends to be heterosexual and gender-unambiguous.